required their Lordships need not go beyond the decision of the Board in *Gillie v. Posho*[1].

It was argued that certain cross-examination of the appellant amounted to a charge that her evidence had been recently fabricated. The appellant was not asked in re-examination whether she had told the same story to Mr. Boswell and their Lordships need not consider whether that would have been competent. It is another matter to lead the evidence of another witness to show that for a long time before the trial the witness has told the same story. Two cases were cited. In *R. v. Benjamin*[2] a challenge to a witness was met by production of notes made by him. In *Stephenson v. Tyne Commissioners*[3] it was held competent to reinforce opinion evidence given by an expert by proving that he had acted on the opinion which he gave in the witness box. These cases are far removed from the circumstances of the present case and do not appear to qualify the general rule.

If their Lordships were of opinion that the decision of the trial Judge regarding the prohibition against sub-letting really depended on his assessment of the credibility of the appellant they would be most unwilling to disturb that decision. But they are satisfied that his decision arose from his misdirecting himself as to the competency and effect of Mr. Boswell's evidence. Accepting the learned Judge's assessment of credibility they must hold that it has not been proved that there was any prohibition against sub-letting in Madame Tay's lease and that therefore the respondent's tenancy is protected by the Control of Rent Ordinance.

Their Lordships regret to note that considerable unnecessary expense has been incurred by including in the printed record notes of counsel's arguments and certain preliminary matter not relevant to the subject matter of this appeal. Their Lordships have been informed by counsel that the appellant's advisers wished to omit these parts of the record but that the respondent's advisers required their inclusion. The usual order for costs must be modified so that the cost of printing this part of the record does not fall on the appellant.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the costs of the appeal subject to deduction of the cost of printing those parts of the record which should not have been included.

Appeal dismissed.

Solicitors: *Speechly, Mumford & Craig; Sydnet Redfern & Co.*

P. T. PELAJARAN NASIONAL INDONESIA v. JOO SEANG & CO. LTD.

[O. C. J. (Rigby J.) October 4, 1957]

[Penang — Originating Summons No. 172 of 1957 in Civil Suit No. 53 of 1957]

Practice and Procedure — Service of Writ of Summons — Strict compliance with procedure — Setting aside judgment obtained in default.

Companies — Registered office — Service of Writ of Summons — Companies Ordinance, 1940, ss. 93(2), 109 and 319.

In this case the defendants sought to set aside a final judgment entered by the plaintiffs in default of defendants' appearance. The plaintiffs were a company constituted and incorporated in Indonesia, and had places of business in both Singapore and Penang. The defendants were a company incorporated in the Federation of Malaya and, according to the statement of claim, had its principal place at No. 144 Beach Street, Penang. Some time in 1954 the plaintiffs entered into an agreement with the defendants whereby the defendants were to act as their agents on a commission basis. In May 1956 the plaintiffs, after obtaining particulars of the defendants from the Registrar of Companies, including the statement that the situation of the registered office of the defendants was at 144 Beach Street, Penang, addressed a Notice of Action to the defendants demanding payment of a sum of $116,409.84 allegedly due to them and threatening legal proceedings if the money was not paid within a stipulated period. The notice was returned with a covering letter addressed at 144 Beach Street and signed by the Managing Director of Joo Seang & Co. Ltd. stating, *inter alia*, that the notice was "apparently meant for Messrs. Joo Seang & Co." When the notice was again returned to them, the defendants denied the existence of any agreement between themselves or any representative acting on their behalf and the plaintiffs. Subsequently the plaintiffs took out a Writ of Summons and on the strength of the information already received from the Registrar of Companies the Writ was served at what had been stated to be the company's registered office at 144 Beach Street. The Summons was returned to the plaintiffs' solicitors by Joo Seang & Co. of that address stating that Joo Seang & Co. Ltd. were "no more at the above address having since removed." The plaintiffs, after confirmation by the Registrar of Companies that the defendants' registered office was at 144 Beach Street, obtained final judgment against them in default of appearance in the sum of $116,409.84 and costs. On July 1, 1957 the plaintiffs' solicitors again wrote to the Registrar of Companies requesting particulars of the defendants firm and in reply the Registrar, for the first time, stated that the "Situation of Registered Office — 146, Beach Street Penang." Subsequently the Registrar disclosed that "When I advised you on 9th April 1957 that the address was 144 Beach Street, Penang, it was not noticed at that time that on 7th February 1955 the Company did in fact give notice to this Registry that its registered office was at 146 Beach Street, Penang, since 1st February 1955." On July 22, 1957 the defendants applied by Summons-in-Chambers for the judgment obtained in default of appearance to be set aside. An affidavit was filed in support of that application by the Managing Director of the Company which *inter alia* alleged that he had no knowledge of the existence of the suit until the 13th July 1957 when he was handed a copy of the judgment obtained in default of appearance by the process server of the plaintiffs' solicitors.

Held: (1) where the law provides a particular method or form of procedure for effecting service, or a particular place at which, or to which, service may be effected, then there must be strict compliance with those provisions, and the Court would set aside a judgment

obtained by default where the requirements have not been complied with;

(2) in this case as the Company had not been served with the Writ of Summons at its registered office the purported service was therefore bad and all proceedings thereafter were bad and the judgment obtained in default of appearance was accordingly a nullity.

Cases referred to:—

(1) *Hamp-Adams v. Hall* (1911) 2 K.B. 942.

(2) *Phillipson & Son v. Emanual* 56 L.T.R. 858.

(3) *Wood v. Anderson Foundry* Co. 36 W.R. 918.

APPLICATION by way of Summons-in-Chambers.

Ng Ek Teong for the applicants.

S. Thillaimuthu for the respondents.

Rigby J. : — This was an application by way of Summons-in-Chambers to set aside a final judgment entered by the plaintiffs against the defendant firm in default of appearance. The application itself was adjourned into open Court for argument. At the conclusion of the argument and having read the affidavits filed by both parties, whilst I found nothing to commend in the conduct and behaviour of the defendant firm, I considered as a matter of law that I had no alternative but to allow the application and set aside the judgment obtained in default of appearance. Since I was of the opinion that the matter involved a point of some practical interest and importance I stated that I would give my reasons in writing. I now proceed to do so.

The facts of the matter are fully set out in the affidavit of Mr. Thillaimuthu, Counsel for the plaintiffs. Mr. Ng Ek Teong, for the defendants, did not dispute the veracity of those facts, although he said, of course, that many of the allegations contained therein were not within the knowledge either of himself or of the defendant firm.

The plaintiffs are a Company, duly constituted and incorporated in Indonesia, and have places of business in both Singapore and Penang. The defendants are a Company incorporated in the Federation of Malaya and, according to the Statement of Claim had its principal place of business at No. 144, Beach Street, Penang. From the Statement of Claim it would appear that some time in 1954 the plaintiffs entered into an agreement with the defendants whereby the defendants were to act as their shipping agents on a commission basis. In May, 1956, perhaps in contemplation of the possibility of these very proceedings, the plaintiffs' then Solicitors took the precaution of writing to the Registrar of Companies, Federation of Malaya, requesting full particulars of the defendant Company.

On the 9th May, 1956, the Registrar of Companies replied to that letter furnishing full particulars, including the statement that the situation of the registered office of the defendant Company was at 144, Beach Street, Penang. Thereafter the plaintiffs addressed a Notice of Action to the defendant firm at 144, Beach Street, demanding payment of a sum of $116,409.84 allegedly due to them and threatening legal proceedings if the money was not paid within a stipulated period. The Notice of Action was returned with a covering letter, addressed at No. 144, Beach Street, and signed by someone purporting to be the Managing Director of Joo Seang & Co. Ltd., stating :—

"With reference to your letter Reference No. 463 of 1956, dated the 19th October, 1956, we regret to have to return same as it is apparently meant for Messrs. Joo Seang & Company."

When the Notice of Action was again returned to Messrs. Joo Seang & Co. Ltd. at 144, Beach Street, stating that the Notice was, in fact, for that firm, i.e. Messrs. Joo Seang & Co. Ltd., the defendant firm, in subsequent correspondence, denied the existence of any agreement between their Company, or any representative acting on their behalf, and the plaintiff firm.

As a result, on the 20th March, 1957, the plaintiff firm took out a Writ of Summons and, on the strength of the information already received from the Registrar of Companies, the Writ was served on the 3rd April, 1957, at what had been stated to be the Company's registered office at 144, Beach Street.

On the 5th April, 1957, the Summons was returned to the plaintiffs' Solicitors with a covering letter reading as follows :—

"Joo Seang & Co.,
144, Beach Street, P.O. Box 591,
Penang.

Penang, 5th April, 1957.

Dear Sir,

We return you herewith the Summons found in our premises, addressed to Messrs. Joo Seang & Co. Ltd., as these people are no more at the above address having since removed.

Yours faithfully,
JOO SEANG & CO.
(Signed) (In Chinese characters)
Manager."

On the 8th April, 1957, the plaintiffs' Solicitors again wrote to the Registrar of Companies enquiring as to the registered office of the defendant Company and received back a letter dated the 9th April, 1957, confirming that "the present situation of the registered office of the abovementioned Company (Joo Seang & Co. Ltd.) is at 144, Beach Street, Penang".

On the 17th April, 1957, the plaintiffs obtained final judgment against the defendant Company in default of appearance in the sum of $116,409.84 and costs.

On the 1st July, 1957, the plaintiffs' Solicitors again wrote to the Registrar of Companies, requesting particulars of the defendant firm and on the 4th July, 1957, the Registrar of Companies replied furnishing the particulars and stating for the first time that the "Situation of Registered Office — 146, Beach Street, Penang".

On the 11th July, 1957, in answer to a letter from the plaintiffs' Solicitors the Registrar of Companies replied as follows :—

"With reference to your letter dated 5th July, 1957, I have to inform you that in the Company's Annual Return made up to 14th October, 1955, signed by Mr. Ong Toh Khoy, a director of the Company, it was shown that the registered office of the Company was at 144, Beach Street, Penang.

2. When I advised you on 9th April, 1957, that the at that time that on 7th February, 1955, the Company did in fact give notice to this Registry that its registered address was 144, Beach Street, Penang, it was not noticed office was at 146, Beach Street, Penang, since 1st February, 1955."

On the 22nd July, 1957, the defendant Company applied by Summons-in-Chambers for the judgment obtained in default of appearance to be set aside. An affidavit was filed in support of that application by one Cheah Say Leong, residing at 146, Bench Street. The deponent described himself as having been at all material times the Managing Director of Joo Seang & Co. Ltd. He alleged that the defendant Company's registered office — and I quote from his affidavit — "is and has been from the 7th day of February, 1955, at 146, Beach Street, Penang and a signboard bearing that name is to be found on the outer wall of the premises". He further alleged that he had no know ledge of the existence of this Suit until the 13th day of July, 1957, when he was handed a copy of the judgment obtained in default of appearance by the process server of the plaintiffs' Solicitors. The deponent was not cross-examined on his affidavit, so that the truth of his allegations contained therein must, therefore, remain a matter of speculation.

On the facts of this case it is, therefore, apparent that :—

(1) As from the 7th February, 1955, the registered office of the Defendant Company was at 146, Beach Street, Penang;

(2) The service of the Writ of Summons on the 3rd April, 1957, was not service on the registered office of the Company; and

(3) The fact that such service was not served on the registered office of the Company was entirely due to the wrong information supplied in the first instance by the Registrar of Companies as a result of the Registrar having overlooked the notice of change of address of its registered office from No. 144 to No. 146, Beach Street as notified to the Registrar by the Defendant Company by letter dated the 7th February, 1955.

Section 319 of the Companies Ordinance enacts that "a document may be served on a Company by leaving it at or sending it by post to the registered office of the Company". Mr. Ng Ek Teong submitted that regardless of whose fault it was or may have been any non-compliance with the strict provisions as to service will nullify the service. He referred to the case of *Hamp-Adams v. Hall*[1]. In that case a Writ of Summons having been served, the date of service was not endorsed thereon within three days as required by Order IX rule 15. It was held that non-compliance with that Order was not an irregularity which could be waived and that the plaintiff, not having complied with the rule, was not entitled to proceed by default and that the judgment by default and verdict thereon must, therefore, be set aside. Vaughan William L.J. in the course of his judgment said :—

"In my opinion it was impossible for the defendant to waive the defect, for the result of the non-compliance with the rule was that there was no Writ on which the Plaintiff is entitled to proceed. ..... Where proceedings are taken by a plaintiff in the absence of the defendant it is most important that there should be at every stage a strict compliance with the rules, and therefore it is a reasonable and proper thing in the case of proceedings by default to treat non-compliance with such a rule as Order IX rule 15 not as a mere irregularity which can be waived, but as a matter which prevents any further proceedings from being taken on the Writ."

It is noteworthy to observe that in that case the fault was due to an officer of the Court in failing to make the necessary endorsement; nevertheless the Court still held that the proceedings were not a mere irregularity but bad *ab initio*.

Mr. Ng Ek Teong then referred to the case of *Phillipson & Son v. Emanual*[2]. In that case the defendant applied by motion to set aside a judgment obtained against him on the ground that a duplicate copy thereof was served upon him and that he requested to see the original. It was contended on behalf of the plaintiff that even though there may have been an irregularity the defendant had not sworn that the proceedings never came to his knowledge nor had he any merits to the defence. Nevertheless, the Divisional Court (consisting of Lord Coleridge C.J. and Day J.) held that there had, in fact, been no service and that the proceedings must be set aside.

In the case of *Wood v. Anderson Foundry Co.*[3] the Court held that service at any office of the Company other than the registered office is bad and must be set aside. In that case the Company had their registered office in Scotland but carried on branch works in England. The Writ in the action was served on the Manager of the branch works and a copy had also been sent by post to the registered office.

On the authorities it seems abundantly clear, therefore, that where the law provides a particular method or form of procedure for effecting service, or a particular place at which, or to which, service may be effected, then there must be strict compliance with

those provisions, and the Court will set aside a judgment obtained by default where the requirements have not been complied with.

It was contended by Mr. Thillaimuthu that since section 109 of the Companies Ordinance provides that the annual return of a Company must state, *inter alia*, the registered office and since the defendants themselves by their annual return dated the 14th October, 1955, had stated their registered office as at 144, Beach Street, then that return being later in point of time than their notice of change of address dated the 1st February, 1955, must be taken to state their correct registered office as, in fact, at 144, Beach Street and not 146, Beach Street. That argument was, in my view, fallacious, having regard to section 93(2) of the Ordinance, which makes it incumbent upon a Company to give notice of change of address of the situation of the registered office within twenty-eight days of such change. The section, moreover, specifically provides :—

"The inclusion in the annual return by a Company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection".

Personally on the facts of this case I find it almost impossible to believe that the defendant Company did not well know of the service of the Writ of Summons at 144, Beach Street and I think it probable that they deliberately elected to take no action on the matter at that stage. Nevertheless, it is a fact that the Writ of Summons was not served upon the registered office of the Company. Mr. Ng Ek Teong has suggested that the correspondence shows, at most, that the defendant Company were merely making use of 144, Beach Street for purposes of correspondence and office work whilst retaining their registered office at 146, Beach Street. Upon the authorities I was of the opinion that since the Company had not been served with the Writ of Summons at its registered office the purported service was, therefore, bad and all proceedings thereafter were bad and the judgment obtained in default of appearance was accordingly a nullity.

On the question of costs I was wholly satisfied that the defendant Company by their general conduct and by the inaccuracy of their annual return for 1955 in which they stated their registered office as at 144, Beach Street had largely contributed to the mistake made.

I accordingly allowed the defendants, as applicants, the costs of the day as against the plaintiffs-respondents, but made no order as to the costs of all previous proceedings.

Order accordingly.

Solicitors: *Braddell & Ramani; S. Thillaimuthu.*

Re PETER WONG; *Ex-parte* MIRANDOLLE VOUTE & CO. LTD.

[O. C. J. (Whyatt C.J.) February 11, 1958]

[Singapore — In Bankruptcy No. 7 of 1957]

Bankruptcy — Annulment of an adjudication order —Sheriff's nulla bona return — Whether Court has power to enquire into its correctness — Bankruptcy Ordinance (Cap. 11), s. 104 — Whether Court has discretion.

This was an application by the debtor for the annulment of an adjudication order made against him on the ground that the act of bankruptcy relied upon in those proceedings, namely, a return by the Sheriff that the debtor was not possessed of any property liable to seizure, was not a valid act of bankruptcy since the debtor was in fact possessed of such property at the date of the Sheriff's return.

The questions for the consideration of the Court were: (i) whether the Court, sitting in Bankruptcy, has power to enquire into the correctness of the Sheriff's *nulla bona* return; (ii) if the Sheriff's return is held to be incorrect, whether the Court must necessarily annul the adjudication or whether, the Court has a discretion in the matter.

Held: (1) the Court, sitting in Bankruptcy, has power to enquire into the correctness of the Sheriff's *nulla bona* return;

(2) the Sheriff's return was incorrect and that jurisdiction conferred by section 104 of the Ordinance is discretionary. **In re Yap E. Boon**[3] distinguished;

(3) in this case, even if the Sheriff's return was incorrect, nevertheless if the petitioning creditor honestly believed on reasonable grounds (that is to say, on the faith of the Sheriff's return) that the debtor had no property liable to seizure, the adjudication was initially good.

Cases referred to :—

(1) *Gyfford v. Woodgate* 103 E.R. 1016.

(2) *In re Harry Dunn, ex-parte the Official Receiver v. Harry Dunn* (1949) 1 Ch. 640.

(3) *In re Yap E. Boon* (1933) M.L.J. 217.

BANKRUPTCY.

D. G. Alcock (*N. A. Christopher* with him) for the debtor.

M. Karthigesu for a creditor.

K. Hilborne for the assign of petitioning creditor.

A. W. Ghows for the Official Assignee.

Whyatt C.J. : — This is an application by a debtor named Peter Wong for the annulment of an adjudication order made against him on the 11th February 1957 on the ground that the act of bankruptcy relied upon in those proceedings, namely, a return by the Sheriff that the debtor was not possessed of any property liable to seizure, was not a valid act of bankruptcy since the debtor was, in fact, possessed of such property at the date of the Sheriff's return.

The first question to be considered is whether this Court, sitting in bankruptcy, has power to enquire into the correctness of the Sheriff's *nulla bona* return. On this point there are no English cases to guide the